

Chapter 13

Guidance on the scope of MiFID and CRD IV

13.6 CRD IV

13.6

Q54.What is the purpose of this section?

This section is designed to help UK investment firms consider:

- whether the *CRD* and the *EU CRR* (which allow the recast *CAD* to continue to apply to certain firms), as implemented in the UK, applies to them;
- if the *CRD* applies, which category of firm they are for the purposes of the FCA's base own funds requirements, for example whether they are an *IFPRU 50K firm*, an *IFPRU 125K firm* or an *IFPRU 730K firm*, an *exempt CAD firm* or a firm falling within the transitional regime for certain commodity brokers and dealers;
- if the *CRD* allows the recast *CAD* to apply for certain firms, which category of firm they are for the purposes of the FCA's base capital resources requirements, for example whether they are a *BIPRU firm* or a *BIPRU firm* falling within the transitional regime for certain commodity brokers and dealers;
- in respect of *collective portfolio management investment firms*, which category of firm they are for the purpose of the FCA's financial resources requirements, for example whether they are an *IFPRU investment firm* or *BIPRU firm*; and
- how the *CRD* and the *EU CRR* otherwise impact on their business, by explaining when a firm will be a *limited licence firm*, a *limited activity firm* or a *full-scope IFPRU investment firm*.

This section is intended to provide a general summary of these issues and not a detailed or exhaustive explanation of the *CRD* and the *EU CRR* as implemented in the UK.

Q55.Are we subject to the CRD and the EU CRR?

Only *investment firms* subject to the requirements of *MiFID* are subject to the requirements of the *CRD* and the *EU CRR* (which allow the recast *CAD* to apply for certain *firms*). This includes *collective portfolio management investment firms* (see Q6, Q6A and Q63).

Despite being subject to the requirements of *MiFID*, broadly speaking, if you are one of the following investment firms, *CRD* and the *EU CRR* will only apply to you in a limited way:

- a firm whose main business consists exclusively of providing *investment services or activities* in relation to commodity derivatives or C10 derivatives, or both, and to whom the *ISD* would not have applied. If you fall into this category, you will fall within a transitional regime under which you will not be subject to the capital requirements of the *EU CRR* or *CRD* but will be subject to other requirements (see Q57); or

- a firm that is only authorised to provide investment advice or receive and transmit orders, or both, without holding client money or securities and does not provide the ancillary service (1) referred to in Section B of Annex I to MiFID, which is safekeeping and administration of financial instruments for the account of clients, including custodianship and related services such as cash/collateral management. If you fall into this category, you will be an *exempt CAD firm* and only subject to base capital requirements under the *CRD* (see Q58 and Q59 below); or
- a firm that:
 - does not provide the *ancillary service* of safekeeping and administration of *financial instruments* for the account of *clients*, including custodianship and related services such as cash/collateral management, and is not authorised to do so
 - is not authorised to provide the following investment services: (a) to deal in any *financial instruments* for its own account; (b) to underwrite issues of *financial instruments* on a firm commitment basis; (c) to place *financial instruments* without a firm commitment basis; (d) to operate a multilateral trading facility; and (e) to operate an organised trading facility;
 - is authorised to provide one or more of the following *investment services*: (a) the execution of investors' orders for *financial instruments*; or (b) the management of individual portfolios of investments in financial instruments;
 - may be authorised to provide one or more of the following *investment services*: (a) reception and transmission of investors' orders for *financial instruments*; or (b) investment advice; and
 - does not hold clients' money and/or securities and is not authorised to do so (it should have a *limitation* or *requirement* prohibiting the holding of client money and its permission should not include *safeguarding and administering investments*).

If you fall into this category, you may be a *BIPRU firm* and as such would not be subject to the capital requirements of the *EU CRR* or *CRD* but would instead be subject to other requirements (see Q58A).

If you are an investment firm to which an exemption in either article 2 or article 3 MiFID applies (see ■ PERG 13.5 and ■ PERG 13 Annex 1 flow chart 2), you are not subject to the *CRD* and the *EU CRR*. However, if you potentially fall within the article 3 exemption, but decide to opt into MiFID regulation, for instance to acquire passporting rights (see Q52), you are subject to the *CRD* and the *EU CRR*. If you do so, you are an *exempt CAD firm* (see Q58 and Q59).

There is also an exemption under the *EU CRR* for *local firms*.

Q56. We are an investment firm to which MiFID applies and do not fall into one of the limited categories described above. How does the CRD and the EU CRR apply to us?

You are an *IFPRU investment firm*. Broadly speaking, you should go through an initial two-stage process in considering how the *CRD* and the *EU CRR* will apply to you:

- consider what kind of base own funds requirements apply to you; and
- consider whether you are a *limited licence firm*, a *limited activity firm* or a *full-scope IFPRU investment firm* to determine how other capital requirements of the *CRD* and the *EU CRR* apply to you.

You are either an *IFPRU 50k firm* (subject to a base own funds requirement of euro 50,000) (see Q60), a *IFPRU 125K firm* (subject to a base capital

requirement of euro 125,000) (see Q61), an *IFPRU 730K firm* (subject to a base own funds requirement of euro 730,000) (see Q62) or a *collective portfolio management investment firm* (see Q63). Your base own funds requirement depends essentially on the scope of your *permission* and any limitations or requirements placed upon it.

If you are an *IFPRU investment firm*, in essence the scope of your *permission* and any limitations or requirements placed upon it also dictate whether you are a *limited licence firm*, a *limited activity firm* or a *full-scope IFPRU investment firm*. Broadly speaking, the benefit of being a *limited licence firm* or a *limited activity firm* (see Q64 and Q65) is that you are exempt from

- minimum own funds requirements to hold capital to cover operational risk, although you are subject to the requirements to hold own funds calculated by reference to credit risk, market risk and fixed overheads (see articles 95 and 96 of the *EU CRR*);
- the requirement to calculate a leverage ratio (see article 6(5) of the *EU CRR*).

A *limited licence firm* is further exempt from the requirements on capital buffers (see the last paragraph of article 128 of *CRD*) and liquidity requirements in Part Six of the *EU CRR* (see article 6(4) of the *EU CRR*).

A *limited activity firm* is exempt from the liquidity requirements in Part Six of the *EU CRR* unless it is both an *ILAS BIPRU firm* and a *significant IFPRU firm* (see article 6(4) of the *EU CRR*).

An *IFPRU investment firm* includes a *collective portfolio management investment firm* (see Q63).

Other derogations may apply (see *IFPRU*).

If you are a *full-scope IFPRU investment firm*, you are subject to the full range of requirements in *CRD* and the *EU CRR*, unless there are specific derogations that apply (see Q66).

The question of whether you are a *limited licence firm* or a *limited activity firm* may also be relevant to capital treatment at a group level. This is outside the scope of this guidance which focuses only on the application of the *CRD* and the *EU CRR* at the level of the individual firm.

Q57. How do we know if we are a firm to which the transitional regime for certain commodity brokers and dealers applies?

You are a firm to which the transitional regime applies if:

- you are a firm to which the Directive 93/22/ECC (ISD) did not or would not have applied on 31 December 2006; and
- your main business consists exclusively of the provision of investment services or activities in relation to financial instruments set out in C5, 6, 7, 9 and 10 of Annex 1 of MiFID. See article 498 of the *EU CRR* or ■ BIPRU TP 15, whichever is applicable.

This exemption is only relevant if you are a firm to which MiFID applies, that is, you do not fall within the exemptions in articles 2 or 3 of MiFID (see Q55). Although you are exempt from the capital requirements of the *CRD* and the *EU CRR* (or the recast CAD as applicable to *BIPRU firms*), you are subject to risk management and other systems and control requirements in the form of SYSC (see ■ BIPRU TP 15.11G or ■ IFPRU 1.1.1 G). You may also be subject to the requirements of chapter 3 of *IPRU(INV)*.

If you fall into this category, you are either an exempt BIPRU commodities firm (see ■ BIPRU TP 15 if you are a *BIPRU firm*) or an exempt *IFPRU commodities firm* (see article 498 of the *EU CRR* if you are an *IFPRU investment firm*).

In our view, your main business for the purposes of this exemption is the main business to which MiFID applies.

Q58. How do we know whether we are an exempt CAD firm and what does this mean in practice?

This category may be relevant to you if you have permission to *advise on investments or arrange deals in investments* in relation to MiFID financial instruments but fall outside the article 3 MiFID exemption (for example, because you choose to opt out of the exemption or because you transmit orders to persons not listed in the exemption or provide services in relation to derivatives that are not transferable securities). You can be an *exempt CAD firm* if you:

- are not authorised to hold client money or securities in relation to MiFID business;
- do not have a *safeguarding and administering investments* (without arranging) permission in relation to MiFID financial instruments; and
- have a requirement on your permission so that the only MiFID investment services and activities you can perform are reception and transmission of orders or investment advice or both.

Where you hold client money for purposes unconnected with providing investment advice or receiving and transmitting orders in relation to MiFID financial instruments, in our view you can still be an *exempt CAD firm*. This might include, for instance, when you hold money or securities for clients to whom you only provide services that do not constitute *investment services* and therefore fall outside the scope of MiFID.

The conditions relating to the article 3 MiFID exemption look similar to those for an *exempt CAD firm*. There are important differences, however, between the two:

- the article 3 MiFID exemption (see Q49) extends only to services provided in relation to transferable securities and units in collective investment undertakings, whereas no such restriction applies to *exempt CAD firms*; and
- the article 3 MiFID exemption requires orders to be transmitted to certain persons only (see Q49 and Q50), whereas no such restriction arises in the case of *exempt CAD firms*.

If you are an *exempt CAD firm*, you are subject to base capital requirements which comprise the following broad options:

- base capital of euro 50,000; or
- professional indemnity insurance of euro 1,000,000 for any one claim and euro 1,500,000 in aggregate; or
- a combination of base capital and professional indemnity insurance resulting in an equivalent level of coverage to the options above.

For the rules transposing these requirements and supporting guidance, see *IPRU(INV)* and in particular sections 13.1 and 13.1A and chapter 9. You will be subject to the relevant ongoing requirements in the Interim Prudential Sourcebook for Investment Businesses relating to personal investment firms and securities and futures firms, as appropriate (see *IPRU(INV)* 13.1A.13R and *IPRU(INV)* 9.2.9R).

Q58A. How do we know whether we are a BIPRU firm and what does that mean in practice?

This category may be relevant to you if you have permission to execute orders on behalf of clients and/or carry out portfolio management in relation to MiFID financial instruments. In summary, a *BIPRU firm*:

- does not provide the *ancillary service* of safekeeping and administration of *financial instruments* for the account of *clients*, including custodianship and related services such as cash/collateral management, and is not authorised to do so;
- is not authorised to provide the investment services of dealing in any *financial instruments* for its own account, underwriting issues of *financial instruments* on a firm commitment basis, placing *financial instruments* without a firm commitment basis, and operating a *multilateral trading facility* or operating an *organised trading facility*;
- is authorised to provide one or more of the *investment services* of executing investor's orders for *financial instruments*, or management of individual portfolios of investments in *financial instruments*;
- may be authorised to provide one or more of the *investments services* of the reception and transmission of investors' orders for *financial instruments*, or investment advice; and
- does not hold clients' money and/or securities and is not authorised to do so (it should have a *limitation* or *requirement* prohibiting the holding of client money and its permission should not include *safeguarding and administering investments*).

You may also be a *BIPRU firm* if you meet the conditions of article 5.2 recast CAD. Broadly speaking, this applies to firms which execute investors' orders and hold financial instruments for their own account provided that:

- such positions arise only as a result of the firm's failure to match investors' orders precisely;
- the total market value of all such positions is subject to a ceiling of 15% of the firm's initial capital;
- the firm meets the requirements laid down in articles 18 and 20 recast CAD (including own funds requirements in respect of position risk and settlement and counterparty credit risk); and
- such positions are incidental and provisional in nature and strictly limited to the time required to carry out the transaction in question.

Where you hold client money for purposes unconnected with providing investment advice or receiving and transmitting orders in relation to MiFID financial instruments, in our view you can still be a *BIPRU firm*. This might include, for instance, when you hold money or securities for clients to whom you only provide services that do not constitute *investment services* and therefore fall outside the scope of MiFID.

There is a discretion in article 95(2) of the *EU CRR* which the *FCA* has exercised to keep *BIPRU firms* on the recast CAD and Banking Consolidation Directive, as they stood under national law (ie, *BIPRU* and *GENPRU*) on 31 December 2013. Consequently, if you are a *BIPRU firm*, you are subject to base capital resources requirement of euros 50,000 (see ■ [GENPRU 2.1.48 R](#)) and, for the calculation of the variable capital requirement for a *BIPRU firm*, see ■ [GENPRU 2.1.45 R](#).

A *collective portfolio management investment firm* may also include a *BIPRU firm* (see Q63).

Q59. If we are subject to the IDD, does this make any difference to the requirements which apply?

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Yes. If the only *investment services* that you are authorised to provide are investment advice or receiving and transmitting orders or both, without holding client money or securities, you can still be an *exempt CAD firm*. However, you are subject to different base capital requirements. Broadly speaking, article 31(2) of the *CRD* requires you to have professional indemnity insurance of euro 1,250,000 for any one claim and euro 1,850,000 in aggregate (this is the *IDD* requirement), plus coverage in one of the following forms:

- base capital of euro 25,000; or
- professional indemnity insurance of euro 500,000 for any one claim and euro 750,000 in aggregate; or
- a combination of base capital and professional indemnity insurance resulting in an equivalent level of coverage to the options above.

For the rules transposing these requirements and supporting guidance, see the final paragraph of the answer to Q58.

As mentioned in Q58, when you hold client money or securities for purposes unconnected with providing investment advice or receiving and transmitting orders in relation to MiFID financial instruments, in our view you can still be an *exempt CAD firm*. This might include, for instance, when you hold client money for those to whom you provide insurance mediation services.

You should also bear in mind that if you are a firm to whom article 2 or article 3 MiFID applies (see ■ PERG 13.5), you are not subject to the *CRD*.

Q60. Are we an IFPRU 50K firm?

This category may be relevant to you if you are not an *exempt CAD firm* or a *BIPRU firm* and have one or more of the following permissions in relation to MiFID financial instruments:

- arranging (bringing about) deals in investments*;
- dealing in investments as agent*; or
- managing investments*,

provided that you are not authorised to:

- hold client money or securities in relation to MiFID business or *safeguard and administer (without arranging)* MiFID financial investments; or
- deal on own account in, or underwrite on a firm commitment basis, issues of MiFID financial instruments (if you have a *dealing in investments as principal* permission in relation to MiFID financial instruments, you need a limitation or requirement on your permission to this effect).

Q61. Are we an IFPRU 125K firm?

This category may be relevant to you if you would have been an *IFPRU 50K firm* but for the fact that you are entitled to hold client money or securities in relation to MiFID business or hold MiFID financial instruments.

You may also be an *IFPRU 125K firm* if you meet the conditions of article 29(2) of the *CRD*. Broadly speaking, this applies to investment firms which execute investors' orders and hold financial instruments for their own account provided that:

- such positions arise only as a result of the firm's failure to match investors' orders precisely;
- the total market value of all such positions is subject to a ceiling of 15% of the firm's initial capital;

- the firm meets the requirements laid down in articles 92 to 95 of the *EU CRR* and Part Four of the *EU CRR* (including own funds requirements in respect of position risk, settlement and counterparty credit risk and large exposures); and
- such positions are incidental and provisional in nature and strictly limited to the time required to carry out the transaction in question.

If you meet the conditions of article 29(2) of the *CRD* and are not authorised to hold client money or securities in relation to MiFID business or *safeguard and administer (without arranging)* MiFID financial instruments, you will be an *IFPRU 50K firm*.

Q62. Are we an IFPRU 730K firm?

If you are an *IFPRU investment firm* and are neither an *IFPRU 50K firm* nor an *IFPRU 125K firm* nor a *collective portfolio management investment firm* (see Q63), you will be an *IFPRU 730K firm*.

Q63. We are a collective portfolio management investment firm. How will the the CRD and the EU CRR apply to us? Does the recast CAD continue to apply to us?

Collective portfolio management investment firms (AIFMs that are authorised to perform the additional services of portfolio management, investment advice, safeguarding and administering of units and reception and transmission of orders in relation to financial instruments and UCITS management companies that are authorised to perform the additional services of portfolio management, investment advice and safeguarding and administration of units) are subject to the CRD and the EU CRR in parallel with the capital requirements in AIFMD and/or the UCITS Directive (as applicable). This category of collective portfolio management investment firms are also IFPRU investment firms. See IFPRU and [IPRUINV link](#).

As an exception to the above, *collective portfolio management investment firms* which are also a *BIPRU firm* (see Q58A) are subject to the recast CAD in parallel with the capital requirements in *AIFMD* and/or the *UCITS Directive* (as applicable). See *GENPRU*, *BIPRU* and [IPRUINV link](#).

If you are a *collective portfolio management investment firm*, your minimum base own funds requirement is contained in [IPRUINV link](#).3.1R.

In our view, a *collective portfolio management investment firm* should be a *limited licence firm*, as *AIFMD* and/or the *UCITS Directive* (as applicable) prevents it from dealing on own account outside its scheme management activities. As a result, where a *collective portfolio management investment firm* has a dealing in investments as principal permission, this will only be required as a result of its individual portfolio management activity and it will not be dealing on own account for the purposes of the MiFID and the *CRD* and the *EU CRR* (or the recast CAD as applicable to *BIPRU firms*).

Q64. Are we a limited licence firm?

A *limited licence firm* is one that is not authorised to:

- deal on own account (see Q16); and
- underwrite and/or place financial instruments on a firm commitment basis (see Q22).

For the purpose of the definition of a *limited licence firm*, a firm does not deal on own account when executing client orders by matching them on a matched principal basis (back-to-back trading) if its activities are consistent

with the conditions of article 29(2) of CRD (see Q61) or article 5.2 of the recast CAD (see Q58A).

You can be a *limited licence firm* if you are either:

- an *IFPRU 50K firm* (see Q60); or
- an *IFPRU 125K firm* (see Q61).

Generally, you cannot be a *limited licence firm* if you are an *IFPRU 730K firm*. However, you may be a *limited licence firm* if you operate a multilateral trading facility or an organised trading facility (and therefore are an *IFPRU 730K firm*) and do not have a *dealing in investments as principal* permission enabling you to deal on own account or to underwrite or place financial instruments on a firm commitment basis. Therefore if you deal on own account under article 20(3) of MiFID (Specific requirements for OTFs) you will not be a *limited licence firm*.

For calculation of the variable capital requirement for an *IFPRU limited licence firm* (including a *collective portfolio management investment firm*) see article 95 of the *EU CRR*.

Q65. Are we a limited activity firm?

A *limited activity firm* is an *IFPRU 730K firm* that deals on own account only for the purpose of:

- fulfilling or executing a client order; or
- gaining entrance to a clearing and settlement system or a recognised exchange when acting in an agency capacity or executing a client order.

If you wish to be a *limited activity firm*, you should apply for a limitation on your *dealing in investments as principal* permission reflecting these conditions.

There is also a category for certain firms which, among other things, do not hold client money or securities and have no external customers.

Q66. What is the effect of being an IFPRU investment firm subject to the CRD and the EU CRR which is neither a limited licence firm nor a limited activity firm?

You will be a *full-scope IFPRU investment firm*, subject to the full range of *CRD* and *EU CRR* requirements, unless there are specific derogations that apply.